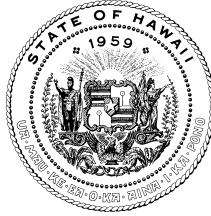


LINDA LINGLE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

STATE HISTORIC PRESERVATION DIVISION
601 KAMOKILA BOULEVARD, ROOM 555
KAPOLEI, HAWAII 96707

**HAWAI'I ISLAND BURIAL COUNCIL
MEETING MINUTES**

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
DEPUTY DIRECTOR - LAND

DEAN NAKANO
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

DATE: THURSDAY, DECEMBER 21, 2006
TIME: 9:00 A.M.
PLACE: NATURAL ENERGY LABORATORY HAWAI'I AUTHORITY
73-4660 QUEEN KA'AHUMAN HIGHWAY
KAILUA-KONA, HAWAI'I

ATTENDANCE:

HIBC MEMBERS: Charles Young, Chair
Ululani Sherlock, Vice-Chair, Hilo
Ronald Dela Cruz, Kohala
Leningrad Elarionoff, Kohala
Ku Kahakalau, Hamakua
Roy Helbush
Cynthia Nazara, Kona
Dutchie Saffrey, Puna

ABSENT: Kaleo Kualii'i, Kona
Pele Hanoa, Ka'u
Anna Cariaga, Ka'u
Jacqui Hoover

SHPD Staff: Keola Lindsey, SHPD-History and Culture Branch
Colin Lau, Deputy Attorney General

GUESTS: Clarence A. Medeiros
Nellie J. Medeiros
Iwalani Arakaki
Debralee Kailiwai-Ray
John H. Kailiwai
Haili Kailiwai-Ray
Curtis Tyler
Coral Rasmussen
Leslie Harakawa
John Zabriskie
Byron Moku
Nani Langridge
Ruby McDonald
Maryanne Maigret
Keoni Alvarez
Aileen Alvarez

I. OPENING REMARKS

HIBC Chair Charles Young (Young) called the meeting to order at 9:17 a.m.

Ku Kahakalau (Kahakalau) offered a pule.

The HIBC members, SHPD staff and the Deputy Attorney General introduced themselves to the audience.

II. APPROVAL OF THE NOVEMBER 16, 2006 HIBC MEETING MINUTES

A motion was made to approve the November 16, 2006 HIBC meeting minutes. (Elarionoff/Saffrey)

Vote: All in Favor

III. BUSINESS

A. BURIAL TREATMENT PLAN FOR SITE 50-10-20-19415

PU'ULANI RANCH SUBDIVISION PHASE II

PU'UANAHULU AHUPUA'A, NORTH KONA DISTRICT, HAWAI'I ISLAND

TMK (3) 7-1-006:128

Information/Recommendation/Determination: Discussion of the information contained within the burial treatment plan. HIBC determination to preserve in place or relocate the burials identified within the burial treatment plan. HIBC recommendations to the Department on appropriate short and long term preservation and protective measures for the burials sites identified within the burial treatment plan.

Keola Lindsey (Lindsey) said this matter was on the November 2006 HIBC agenda and that began the 45 day statutory timeframe the HIBC has to render a determination. A revised burial treatment plan was included in the HIBC's mail packet this month.

Coral Rasmussen (Rasmussen) introduced herself to the HIBC. Rasmussen is an archaeologist who is presenting a burial treatment plan to the HIBC on behalf of the landowners, Mr. John Zabriske and Ms. Leslie Harakawa.

The plan has been revised since the November 2006 HIBC meeting. One of the concerns was access for the descendants, which has always been an issue at Pu'ulani Ranch. The landowners have worked out a special access code for the descendants through the Pu'ulani Ranch Homeowners Association. Protocol for access will be worked out between the landowners and the descendants. This protocol will be updated every five years.

Another concern was a schedule for implementing the details of the plan. Within 120 days of approval by the SHPD, the permanent buffers will be established and delineated. Within 240 days of SHPD approval, the preservation area will be filed or registered as appropriate.

The descendants have been provided the gate access code.

Ulu Sherlock asked if the access policy is documented.

John Zabriske (Zabriske) and Leslie Harakawa introduced themselves to the HIBC. They are the landowners of the property where the burial site is situated.

Zabriske said the issue of access for the descendants was raised with the Homeowners Association who had a meeting and decided to provide the permanent access code.

Sherlock asked if the access code is for access to the entire area.

Harakawa said they would have to ask the association, because it is her understanding the code is for descendants to have access to this burial site.

Zabriske said they were not at the meeting, but what was described in the email which included the code was that it was to address all the burial issues in the area.

Harakawa said they were not at the meeting, so it is hard to say what the association's intent is. Access will be provided to the descendants via this code to the burial site on the property they own.

Ron Dela Cruz said one of the issues at Pu'ulani Ranch has always been access to the burials for the descendants. The question is whether this code provides access through common areas of the subdivision to just one burial site or all of them. Dela Cruz asked Lindsey if a copy of the associations meeting minutes should be provided to the SHPD for future reference.

Lindsey said it needs to be clarified whether the association has established a general policy of allowing access to the descendants to all burial sites within the subdivision via this code. In terms of this specific property, the landowners have established an access policy.

Dela Cruz said clarifying the access policy would answer a lot of questions.

Leningrad Elarionoff (Elarionoff) asked how the timeframe of 240 days for implementing the proposals in the plan was selected. It seems like a random number.

Rasmussen said she is not sure.

Elarionoff referred to the section of the plan which discusses the process for any inadvertent burials which are approved to be relocated. Elarionoff said there is no mention of having any of the lineal or cultural descendants present.

Rasmussen said that having the descendants present can be added into the plan. Rasmussen said that a meeting has been scheduled for the kupuna to meet with her on the property on January 11, 2007.

Young asked if there are CC&Rs for the subdivision which allow access for descendants.

Zabriske said he did not think so.

Young said if access for descendants was referenced in the CC&R's, it would be a blanket access policy for descendants to all burial sites in the subdivision. Young said he understood that Zabriske and Harakawa can only allow access to their property.

Young asked Lindsey to obtain copies of the Pu'ulani Ranch CC&R's and a copy of the Homeowners Association meeting minutes when providing the access code was discussed.

Zabriske said he was not at the association meeting and has not seen the meeting minutes, but he has gotten the sense that providing the access code was a common solution for access to all the burial sites.

Young said that would be a huge step forward.

Kahakalau said she is uncomfortable with the discussion of relocating inadvertent burials contained within the plan. The HIBC does not move burials just because they are in the way of a house, the burial comes first.

Rasmussen said the burial would only be removed under certain conditions, it would not automatically happen. The SHPD would still have to approve the relocation.

Lindsey said the references to inadvertent in the plan are contingencies for what could happen. When inadvertents occur, there is a process that the State will follow and the outcome is never predetermined.

Kahakalau said she strongly disagrees with even discussing relocation if it is not a life or death situation.

Young said if the HIBC approves the plan, it may be interpreted as the HIBC giving tacit approval for relocating inadvertent burials. There are laws that handle inadvertent burials and it may be more appropriate to just state that the process within the statutes will be followed. There is language in this section of the plan that the HIBC is uncomfortable with.

Rasmussen said she can take the section out and just say that the process mandated by the Hawai'i Revised Statutes will be followed.

Young said he would also like to see language indicating a decision will be made in consultation with the landowners and any lineal and cultural descendants.

Elarionoff said he is comfortable with having the discussion in inadvertents in the plan because it makes it complete and spells out exactly what will happen.

Dutchie Saffrey (Saffrey) said she is concerned about the term inadvertent, because there are burials that the family has pointed out that still have not been recognized.

Rasmussen said they have done extensive archaeological testing in certain areas, but there is also the meeting scheduled with the kupuna on January 11, 2007.

Zabriske said they have been associated with the parcel for only nine years now and they are fully committed to working with the descendants, whether it be access or any other issues. Their intent is to subdivide the parcel into three and retain the middle parcel which will have the burial site. Zabriske said he and his wife were raised in Hawai'i and understand their concerns and are fully committed to doing the right thing.

Debralee Kailiwai-Ray (Kailiwai-Ray) provided the following written testimony:

“ I am testifying on behalf of the Pu’uanahulu ohana and as a recognized lineal descendant, my name is Debralee Kailiwai-Ray.

Aside from copies for the Hawai’i Island Burial Council members, I provided the owners/owners representative with my testimony and attachments. You will find color copies of pictures that I have taken March 1996 after heavy rains and damage occurred along the base and front side of Pu’u o Kaiwi and two drywells on Pu’u Kamanu Loop. These pictures show extensive erosion, drainage problems and damage to a portion of the road in March and September, 1996. Repairs were done, but threat of flooding, erosion and drainage problems still exist. The prposed three subdivision lots and projected construction activity with the flooding issue will negatively impact the burial(s). We do not approve this 2nd revised plan.

I have the following comments:

- On December 18, 2006, Coral Rasmussen and I received an email from Curtis Tyler with helpful comments and useful information on language recently incorporated in a BTP for Pahoehoe 2 in the same moku. Mahana Gomes and I are currently reviewing the information. (Thank you Curtis)

- We also received on December 18, 2006 an email from Mr. Athens confirming the owner’s offer to meet and visit the burial site today. It was difficult for us to coordinate at such short notice this visit with our kupuna and informants. We have asked that Mr. Athens and or Ms. Rasmussen suggest several other dates for a site visit of the entire pu’u and property. We will coordinate with our ohana and get back to them as soon as they provide those dates.

- We requested that accessibility by trail or path be made (grass is tall and overgrown) prior to the site visit. Our kupuna and their safety is important. We are awaiting response from Mr. Athens and or Ms. Rasmussen.

- I believe the earliest availability for Ms. Rasmussen is after the holidays (January 08, 2006)- this is a work in progress and would suggest that this BTP is not placed on the agenda until a final product is agreed upon.

Mahalo nui loa for your time and allowing the opportunity to give my testimony,

Debralee Kailiwai-Ray”

Kailiwai-Ray said that a site visit has been scheduled with Rasmussen for January 11th and that she received the access code for the entry gate to the subdivision this morning.

Elarionoff asked why the family does not approve the revised plan.

Kailiwai-Ray said they are still going through it and they need an open line of communication with Rasmussen and the landowners.

Kahakalau asked about the pictures Kailiwai-Ray distributed showing the erosion.

Kailiwai-Ray said the erosion was on the whole front side of Pu'u o Kaiwi. They have also requested the site visit so family members who have knowledge of additional burials can view the area. The erosion affects areas where there are burials that are not recorded in the plan.

Zabriske said the erosion occurred in 1996 in an area well removed from the burials.

Kahakalau said at this point the family has not had the opportunity to walk through the area with the landowners and the archaeologists to identify all the burials.

Kailiwai-Ray said she has an aunty and another person who want to walk the area. The road, Kamanu Loop is part of the Pu'u. The testing that was conducted was only in one area near the headstone and she only found out about the testing after it happened, so no lineal descendants were present.

Young said the families need more time to review the plan and meet with the landowner on site.

Kailiwai-Ray agreed.

Kahakalau asked if a pathway can be made for the kupuna for the January 11th meeting.

Zabriske said this is the first time he is hearing the request. The area is six acres, is the request for that whole area to be cleared.

Kailiwai-Ray said they would like the whole area to be cleared. It is rough terrain with rocks and it is overgrown.

Zabriske said when the work was first done, the whole area was clear and it was his understanding Kailiwai-Ray was requested to come out and take a look at the area. Then, Kailiwai-Ray said that there was a cemetery, so additional archaeological testing was done.

Kailiwai-Ray said she was never told about the testing. The lines of communication need to be open, because it is not just her, there is the family. Some of the suggestions that Curtis Tyler made need to be integrated into the plan.

Young said it is his understanding that the HIBC has 45 days from the date of the November HIBC meeting to make a determination of preservation in place of the burials identified in the plan, and any burials identified after that would be inadvertent.

Lindsey said it goes back to burials identified in the inventory survey, which is approved as was the testing conducted on the Pu'u. Whether the HIBC approves this plan or not has nothing to do with the classification of burials identified in the future.

Young said if more burials are identified by the family on January 11th, would they be inadvertent.

Lindsey said the circumstances would have to be reviewed, but it all goes back to the approval of the inventory survey. The issue before the HIBC for this burial is preservation in place and after that there is a 90 day timeframe to approve the final preservation plan.

Kahakalau said the descendants getting the access code is a positive step forward.

Kailiwai-Ray agreed and said all they are asking for is the lines of communication to remain open.

Saffrey said the descendants should be invited to the association meetings.

Dela Cruz said the HIBC needs to act within the 45 days so the opportunity for the HIBC to preserve the burials is not lost.

Young said if the HIBC fails to make the determination at this meeting a number of things can happen. The HIBC can ask for an extension or allow the clock to run out, in which case the Department will make the determination. The proposal is preservation in place, and that will probably happen, but the HIBC will lose the opportunity to provide recommendations.

Lindsey said the HIBC can provide recommendations within the required timeframes on the treatment of any Native Hawaiian burial site, regardless of the classification of a burial site.

Sherlock said the association's policy of providing the access code to the descendants should be documented.

Kahakalau said the plan calls for a 20 foot temporary construction buffer. Kahakalau said she is not sure if that is sufficient. Construction buffers are usually much larger.

Young said the temporary buffers are usually 75 feet.

Rasmussen said she did not think there was a standard temporary buffer distance.

Zabriske said the general plan is to subdivide into three lots, but there is no specific plan for building on the lot for the burial, he does not even know where the house would be.

Dela Cruz said the idea is to provide protection for the burial. Personally, Dela Cruz thinks 20 feet is a little to close to build a house next to a kupuna. It is something to think about.

Kahakalau said there may not be a standard, but there is a precedent that has been set and a twenty foot temporary buffer is way too small. The plan also calls for a ten foot permanent buffer and that is also inadequate. The idea of an additional no build setback should also be discussed.

Young said the temporary buffers protect the site for the short term during construction and the permanent buffer protects the burial for the long term. A construction buffer of 75 feet and a permanent buffer of 20 feet is something the HIBC is used to seeing.

Harakawa said the subdivision application is with the County, and the proposal for larger buffers would make one of the three lots unusable.

Young said the construction buffer is temporary and can be removed. The buffer would be for heavy equipment, like D-11s. Smaller equipment, like a backhoe potentially would be allowed within the temporary buffer. The idea of the no build setback is to prevent homes from being built right up against the wall which delineates the permanent buffer. Another accommodation detailed in plan is having the monitor present.

Elarionoff said he reviewed the proposed buffers and is comfortable with them because he is familiar with the terrain in the area and has operated construction machinery before. This area has soft soil and the machines will do the work really fast. If it was hard terrain and the machines would have to fight to do the work, the buffers would have to be larger. It appears one machine will be able to do the work, so there will be more control over the work on the lots.

Roy Helbush (Helbush) said there will also be the monitor keeping an eye on the machines and the buffers to make sure they don't get to close.

Young left the meeting at 10:34 a.m. Quorum was maintained and Vice-Chair Sherlock took over the Chairman's responsibilities.

Curtis Tyler (Tyler) said he has reviewed the plan and submitted suggestions to Rasmussen and Kailiwai-Ray relative to the issues raised at the November meeting. Tyler said his goal is to ensure the many problems that have occurred up in Pu'u anahulu are not repeated.

Tyler provided recommendations that should be incorporated into a revised plan. The sentence on page one of the plan which speaks of the management approach considering reburial should be deleted.

Young returned to the meeting at 10:38 a.m. and reassumed his responsibilities.

Tyler said pages 8-10 speak of informant testimony identifying multiple graves being in the area. The plan only deals with one burial. Because no other graves have not been identified during archaeological field work does not mean they are not there, only that the work has not found them.

A construction buffer of 20 feet is too small, and should be at least 50-75 feet to ensure the site is protected. The temporary fencing should not come down until the permanent buffer is in place. No permits for ground alteration should be applied for until all approved buffers are in place and verified. The buffers should be delineated by orange construction fencing. The permanent buffers can always be built first.

Page 22 calls for moving three inscribed stones identified in the area to the vicinity of the burial site. Tyler questioned the reasons for moving these stones and whether the descendants have been consulted. No ground alteration on the upper slopes of Pu'u o Kaiwi should be permitted and any re-grading should be minimized.

The discussions of inadvertents in the plan contemplates the obvious possibility that there are more burials there. Coupled with the documented oral history provided by the families, any further burials found should be treated as "previously known" or withdraw the plan and conduct more archaeological work.

The plan also discusses inadvertent impacts to the identified site. If all proper interim and permanent measures are in place, there should be no inadvertent disturbances to the site. It is very worrisome that a inadvertent impact to the site is even contemplated.

Tyler said paragraphs four and five on page 22 should be revised to ensure accordance with the Statutes and Administrative Rules in the event there is an inadvertent discovery.

Page 23 of the plan proposes a 10 foot permanent buffer. This is too small and it should be at least 20 feet. There should also be an additional 10 foot no build setback from the permanent buffer. A metes and bounds description of the preservation area must be provided and must be a part of the recorded perpetual deed and CC&R's and run with the land in perpetuity. Landscaping and delineation of buffer boundaries should be determined in consultation with the families and not determined solely by the project architect. Perpetual maintenance of the site by the landowner and access to the site for the descendants should also be a part of the recorded deed and CC&R's.

Copies of all proposed language in the deeds and CC&R's need to be reviewed and approved by the families and the SHPD prior to recordation. The recorded documents should be provided to the same parties within 60 days of recordation. Preservation in place of the burial should be achieved through a restricted covenant incorporated into the deed for the property. All requirements proposed in a revised plan should be verified prior to an occupancy permit being issued for any dwellings on the property.

Tyler said the discussion of inadvertent discoveries detailed in the plan does not appear to include the complete process required by law.

Tyler said the HIBC should motion that his suggested revisions be incorporated into a revised plan and request a time extension from the landowner. The HIBC does not know what the grading plan will be and the HIBC can request further information regarding the proposed grading activity.

Tyler said he has reviewed the replacement pages Rasmussen has submitted today do contain some necessary revisions, but are still inadequate. Tyler acknowledged Rasmussen's hard work in developing the plan and appreciated the opportunity to review the plan and provide recommendations.

Young asked if the descendants have reviewed Tyler's suggestions.

Tyler said he sent them on December 18th, so there has not been a lot of time.

Kailiwai-Ray said they are still going through them.

Ruby McDonald (McDonald) said the replacement pages discuss the possibility of descendants changing and McDonald said the descendants will never change, but names will be added. McDonald said it is her understanding the descendants have not been consulted in the developing the plan. The review of access protocol every five years is offensive. These are the same families coming forward every time and they should not have to be recognized every time something new is proposed.

Lindsey said the families have been recognized as descendants, but still need to provide input on the specific proposals for certain sites.

McDonald said the landowners need to consult with the families.

Sherlock said all of the sites need to be treated properly with respect and hopes the landowners understand that.

Harakawa said they do understand that and want to do everything possible to treat the sites with respect and felt that their actions up to this point show that. They will stay in communication with the descendants and the HIBC.

Kahakalau said the HIBC truly appreciates that and feels an extension of the timeframe for a determination to be made is necessary.

Lindsey said the landowners are present today and the HIBC can request an extension.

Kahakalau said there are many issues that need to be resolved and does not view the plan as complete.

Elarionoff suggested the matter be tabled and have the descendants, the landowner and Rasmussen discuss this and come back and tell the HIBC whether this can be resolved prior to the January HIBC meeting.

Young said the descendants have represented that there are more burials. The families have requested the opportunity to get on the Pu'u and visit the area and potentially agree there is only one burial.

Rasmussen said there is an additional 90 days to approve the preservation plan after the HIBC makes a determination.

Young said the plan only addresses on burial site. The HIBC represents the descendants, who are saying they believe there are more burials. There is a long history in this project, and we are very close to getting it right. Young said he is for the extension because it would be bad to say time is a constraint after all these years and being so close to getting it right. If there is an extension, on the other side there needs to be acknowledgement to get this together and move this forward.

Colin Lau (Lau) said the extension needs to be negotiated between the applicant and the Department. Lau said it is his understanding the extension is being requested on the basis that the inventory survey is incomplete.

Young said the extension request is so the descendants can visit the property and review the plan.

Lau asked how long the extension will be until. The landowners need to agree to it.

Young said it should be before the next HIBC meeting.

Kailiwai-Ray said the site visit is set for January 11th and after that there will be more direction.

Young said the HIBC is requesting a 30 day extension, which will last until the January 2007 HIBC meeting.

Harakawa said they agree to the extension.

Kahakalau thanked Harakawa for the extension and said it is not about stopping their plans.

Harakawa said they agree to the extension, but are frustrated by the process that they have been going through for two years now.

Young said the families have been before the HIBC since 1992. The end product will be worth it if we get it right this time.

Kahakalau said the suggestions provided by the descendants, the HIBC and Curtis Tyler should be incorporated into a revised plan.

A motion was made to defer agenda item III.A. (Kahakalau/Sherlock)

Elarionoff asked if there is a mutual agreement for the 30 day extension.

Young said yes.

Vote: All in Favor

A motion was made to close agenda item III.A. (Kahakalau/Elarionoff)

Vote: All in Favor

B. LINEAL DESCENT CLAIM- SIHP SITE 50-10-37-21766

HOKULI'A PROJECT

ONOU LI AHUPUA'A, SOUTH KONA DISTRICT, HAWAI'I ISLAND

TMK:

Information/Recommendation/Determination: Staff recommendation whether to recognize the applicants as lineal descendants to an identified individual believed to be buried within SIHP Site 50-10-37-21766 which is located within the Hokuli'a Project area. Discussion of the lineal descendancy claim. HIBC determination whether to recognize the applicants as lineal descendants.

Lindsey said a December 13, 2006 memorandum was included in the HIBC's mail packet which recommended deferral of this lineal descent claim pending submittal of substantiating information.

Lindsey said reviewing genealogical claims is very difficult and it is hard for staff to question the information applicants submit, but there is a process that is required. Throughout this review, nothing is questioning this families information, but the SHPD is requesting additional information to back up the claim.

A lineal claim is split into two halves. The first half is substantiating a lineal descent to an individual, which has been substantiated. The second half of the claim is identifying the individual buried in a given location as being the person who you are lineal descended from. In this case, that is what the SHPD is requesting be substantiated.

Elarionoff said the SHPD has recommended deferral and asked why the presentation is being made to the HIBC.

Lindsey said the Department reviews written documents and many times identification of individuals is through oral family history which the HIBC, as a knowledgeable body can consider

and then make a determination with. SHPD memorandums are just recommendations and the HIBC makes the determination regardless of the SHPD's recommendations.

Elarionoff said if the SHPD recommends denial in a given claim, then the HIBC can still consider the information and vote to still recognize the applicant.

Lindsey agreed and said the HIBC makes the determination whether to recognize the applicant or not.

A motion was made for the HIBC to go into closed session to discuss the description and location of a burial site (Kahakalau/Sherlock)

Vote: All in Favor

The HIBC closed session began at 11:29 a.m.

The HIBC closed session ended at 12:03 p.m.

The HIBC meeting was recessed at 12:03 p.m.

The HIBC meeting was reconvened at 12:11 p.m.

A motion was made to recognize the applicants as lineal descendants to an identified individual buried within SIHP Site 50-10-37-21766 (Kahakalau/Sherlock)

Elarionoff questioned whether the HIBC is being premature in making this decision. The SHPD memorandum recommended deferral pending submittal of additional information for review. Elarionoff asked whether the SHPD has given up on additional information being submitted.

Lindsey said there is the possibility that substantiating information will surface, but whether it will is the question.

Young said it is not likely the information would be submitted by next month's meeting or any other meeting. The information is coming from the Medeiros family and the State has taken the right action in allowing the information to be presented directly to the HIBC.

Kahakalau said collaborating oral family history has been submitted and it is HIBC kuleana to accept that.

Elarionoff asked if the family history should be submitted to the State or the HIBC.

Lindsey said it should be to both. The State is seeking more information to provide a favorable recommendation, but that does not disallow testimony directly to the HIBC for consideration in making a determination. The State feels there is a need for more information, it appears the HIBC may have all they need.

Elarionoff if the HIBC supports the claim, then it is done. That may be o.k., but the door should be left open for additional information to come in.

Lindsey said that is assuming there is more information.

Kahakalau said the door has been open for seven years. That is a long time.

Elarionoff said not necessarily. In the Hawaiian culture many things are kept secret and that sometimes works against us.

Dela Cruz said there has been no testimony against the claim.

Cynthia Nazara (Nazara) asked what happens if a kupuna comes forward with information that either backs up the claim or is against it.

Lindsey said he would have to review the information.

Saffrey said this family has done a lot of work on this claim. The HIBC cannot wait anymore. Saffrey said she has listened to the information behind the claim and supports it.

Young said this is a family taking responsibility for their own. If someone comes forward in the future to dispute the claim, they will have to prove that those are not the people buried there. Young has never seen a debate come up in that context, but never say never.

McDonald referenced a case on O'ahu where her family's lineal descendancy recognition was overturned.

Tyler said it is the HIBC's kuleana to recognize descendants or to not recognize. Tyler said he knows Clarence Medeiros, Jr. works very hard on these issues. If the HIBC is satisfied with the testimony received in the closed session, then the family should be recognized.

Elarionoff said it is not that he is questioning what Clarence Medeiros, Jr. has said, it is just that he wished there was someone else present to verify what Auntie Lei Collins said.

Clarence Medeiros, Jr. (C. Medeiros) said someone took the picture of himself and Auntie Lei and she is sitting in the room. It was his wife, Nellie.

Elarionoff asked Nellie Medeiros (N. Medeiros) if she was present when Auntie Lei Collins identified the persons buried within the site.

N. Medeiros said she was. Auntie Lei shared many things with the family. It was a real privilege.

Vote: All in Favor

A motion was made to close agenda item III.B. (Kahakalau/Elarionoff)

Vote: All in Favor

C. COLLATERAL LINEAL DESCENT CLAIM- SIHP SITE 50-10-37-16743

HOKULI'A PROJECT SHORELINE PARK

HOKUKANO AHUPUA'A, NORTH KONA DISTRICT, HAWAII ISLAND

Information/Recommendation/Determination: Staff recommendation whether to recognize the applicants as collateral lineal descendants to an identified individual believed to be buried within

SIHP Site 50-10-37-16743 which is located within the Hokuli'a Project Shoreline Park. Discussion of the collateral lineal descendancy claim. HIBC determination whether to recognize the applicants as collateral lineal descendants.

Lindsey said a December 13, 2006 memorandum was included in the HIBC's mail packet which recommended deferral of this collateral lineal descent claim pending submittal of substantiating information.

A motion was made for the HIBC to go into closed session to discuss the description and location of a burial site (Saffrey/Sherlock)

Vote: All in Favor

The HIBC closed session began at 12:40 p.m.

The HIBC closed session ended at 12:53 p.m.

A motion was made to recognize the applicants as collateral lineal descendants to an identified individual buried within SIHP site 50-10-37-16743 (Kahakalau/Elarionoff)

Vote: All in Favor

A motion was made to close agenda item III.C. (Sherlock/Nazara)

Vote: All in Favor

D. LINEAL DESCENT CLAIM TO KAMAEOKALANI(w)

HOKULI'A PROJECT- PU'U OHAU

KANAUEUE, HALEKI'I AND KE'EKE'E AHUPUA'A, NORTH AND SOUTH KONA DISTRICTS, HAWAII ISLAND

Information/Recommendation/Determination: Staff recommendation whether to recognize the applicants as lineal descendants to Kamaeokalani(w) who is known to be buried on Pu'u Ohau which is located within the Hokuli'a Project area. Discussion of the lineal descendancy claim. HIBC determination whether to recognize the applicants as lineal descendants.

Lindsey said a December 13, 2006 SHPD memorandum was included in the HIBC mail packet which recommended Jayla A. Medeiros and Jaimin N. Medeiros be recognized as lineal descendants to Kamaeokalani.

A motion was made to recognize Jayla A. Medeiros and Jaimin N. Medeiros as lineal descendants to Kamaeokalani (Kahakalau/Saffrey)

Vote: All in Favor

A motion was made to close agenda item III.D. (Kahakalau/Saffrey)

Vote: All in Favor

A motion was made to recess the HIBC meeting for lunch (Sherlock/Saffrey)

Vote: All in Favor

The HIBC meeting was recessed at 1:01 p.m.

IV. CASE UPDATES

A. SIHP SITE 50-10-45-24851

WAIKAHEKAHE NUI AND WAIKAHEKAHE IKI AHUPUA'A, PUNA DISTRICT, HAWAII ISLAND

TMK (3) 1-6-091:054 and (3) 1-6-090: 048, 049, 056, 055, 076, 077, 078, 079 and 080

Information/Recommendation: Discussion of the history of SIHP Site 50-10-45-24851. Discussion of a HIBC letter dated December 11, 2006. HIBC recommendations to the Department on appropriate protective measures for the site.

Keoni Alvarez (K. Alvarez) said he checked to see if there are any kind of building permits for the properties the cave is located on. There are no building permits on any of the properties.

K. Alvarez showed the HIBC video of testimony from a Mr. Elson Kalawe who had been into the cave.

Kalawe testified that he had been into the cave 17 years ago with former SHPD archaeologist Marc Smith and another archaeologist and observed the burials within the cave.

Young said the question is whether the site should be classified as inadvertent or previously known. Young said the letter he wrote to the Department on behalf of the HIBC supports classifying the site as previously known, a position which is somewhat supported by OHA.

If the site is classified as previously known, it would be under the HIBC's jurisdiction. The letter he wrote says there needs to be protective measures for the burials and for the cave. Young said Kalawe did not make any references to the cave he went into being this exact cave.

K. Alvarez said it is, Kalawe mentioned Anthirium Drive.

Kahakalau said the HIBC has recommended the site be treated as previously known and asked if that meant anyone who wanted to build would have to submit a burial treatment plan.

Lindsey said the first issue is whether the site is previously known. Second, if the SHPD reviews any action that would have the potential to affect the area which is defined as the burial site, the SHPD would require mitigation via a burial treatment plan.

Young said the first time this matter was on the HIBC agenda, the site was classified as an inadvertent. Subsequent to that, K. Alvarez has been before the HIBC three other times providing

the HIBC with updates on any progress. What Young has tried to capture in the letter is that events that have been documented indicate that the site should be treated as previously identified.

The State has determined that the iwi and their immediate surroundings will be protected. Immediate surrounding is defined as the iwi and not the whole cave. Young said the sticking point in his mind is the determination by the State that the site is inadvertent. If Marc Smith went into the cave on behalf of the State, does that make the site previously known.

Kahakalau asked if there has been a response to the letter.

Young said no. If Marc Smith was in the cave, Young wondered if that should result in the site being classified as previously known.

There were discussion in the past regarding sealing the entrance to the cave.

Aileen Alvarez (A. Alvarez) said there has been talk about it, but it hasn't been done.

K. Alvarez said they do not want people going in there. It needs to be sealed in an appropriate way. We need to recognize that it is there.

A. Alvarez said the SHPD Administrator said the State would seal the cave at the HIBC meeting in Pu'uuananuhulu.

K. Alvarez said then about two weeks after that, Melanie Chinen said the State would not be recognizing the whole cave as the burial and that is where things turned. K. Alvarez said this thing is going to court and knows it is right to protect the whole cave.

Young said the State has notified all the landowners and the County.

Lindsey said the landowner of the property with the opening and the landowner directly above the burials have been notified specifically. The SHPD has requested that in the event the County reviews anything related to any of the lots above the cave, that the SHPD be given the opportunity to transmit any agreed upon and approved mitigation measures to the County.

K. Alvarez said buffer zones should have been in place automatically.

A. Alvarez said the landowners do not need a grading permit.

Lindsey said the SHPD has requested the opportunity to comment even if the County reviews a building permit. There is the issue of the landowners not having to have a grading permit.

Kahakalau said some people don't get building permits.

K. Alvarez said most of the damage and destruction is done by the bulldozers grading. Because we know where the cave is, the landowners need to be on notice not to grub there properties.

Kahakalau asked how else the HIBC can help.

K. Alvarez thanked the HIBC for writing the letter. The next thing is to just go to court. The State is not listening to the recommendations and he cannot just sit back and let the site be damaged. People are supporting them in many ways.

A. Alvarez said there needs to be buffer zones because so many people are building.

Kahakalau said the letter went out December 11th. Kahakalau asked if there is a timeline for a response.

Lindsey said possibly in the early part of next year.

Kahakalau said the HIBC needs to wait for a response. Maybe sending another letter is an option. The information about Marc Smith, a State archaeologist being to the site is important. Kahakalau suggested the Puna Representative of the HIBC write her own letter in support.

Young said the State needs to be aware of Kalawe's testimony. Young suggested if K. Alvarez knows who the landowners are, he can communicate with them.

K. Alvarez said when this all first started, he sent out a letter to everybody. He also sent a letter to the Planning Director with all the lots. This was all before the bulldozing occurred.

Young said everyone is on notice and cannot say they did not know.

Young said having testimony that Marc Smith was in the cave is important. Young asked Lindsey if any documentation generated by Smith has been located in the State's records.

Lindsey said no.

Sherlock said there needs to be some sort of permanent record with both the State and the County red flagging these lots and any others affected by burials. That way every time staff changes or an administration

Elarionoff said if another letter goes out, it should be from the HIBC Chair because it shows the HIBC is united and not individual. It should be done immediately.

Saffrey said the letter should be based on Kalawe's video testimony. The only thing is the Kalawe does not provide a date when he went to the site.

K. Alvarez said we know Marc Smith went there and that should be enough. The State should be responsible for keeping track of their records.

A. Alvarez said she can use certain medical records to verify the date they went into the cave if this goes to court.

Elarionoff said if Smith was working for the State, there should be a record.

K. Alvarez said Keikialoha Kekipi was also there.

Nazara asked how the police got involved.

A. Alvarez said because she called them and the called the DLNR and Smith.

Nazara said the police should have a record then.

A. Alvarez said they don't, they only keep their records for five years.

McDonald said she remembered hearing about this case, so the Department should have some sort of record of Marc Smith being there. The Department has already determined it is an inadvertent discovery. There should be some sort of letter with a determination to preserve in place.

Young said the Department has determined to preserve in place, but are not treating the whole site as the burial.

McDonald said the HIBC needs to look into the Caves Protection Act.

Kahakalau said there appears to be additional evidence that a State archaeologist went there and that may tie into the site being classified as previously known.

Lindsey said the SHPD responds to calls all the time of burials being discovered and it does not change the classification. The SHPD response is for assessment and documentation, but if the site is an inadvertent, the SHPD site visit does not change that.

A motion was made that the HIBC write a letter to present new information to the State for review (Elarionoff/Kahakalau)

Vote: All in Favor

A motion was made to close agenda item IV.A. (Sherlock/Kahakalau)

Vote: All in Favor

B. HOKUKANO AND KAALAIKI AHUPUA'A KA'U DISTRICT, HAWAI'I ISLAND TMK (3) 9-5-016:036

Information/Recommendation: Discussion of community concerns regarding burial sites on the TMK parcel and possible impacts to the burial sites by the construction of a home on the property. Discussion of the advice and or opinions the Department has received from the Department of the Attorney General regarding this matter.

A motion was made to defer agenda item IV.B. (Sherlock/Kahakalau)

Vote: All in Favor

C. UNIVERSITY OF PENNSYLVANIA NAGPRA REPATRIATION

Information/Recommendation/Determination: Discussion of the HIBC response to the letter sent by the University of Pennsylvania regarding the repatriation of an iwi po'o.

Lindsey said the HIBC did send a letter to the University of Pennsylvania expressing an interest in being a NAGPRA claimant. Lindsey said he has not heard anything back. Lindsey said it is his understanding the other Island Burial Council's deferred to the HIBC.

Young said the other claimant is Hui Malama.

Lindsey said and potentially OHA.

A motion was made to close agenda item IV.C. (Kahakalau/Elarionoff)

Vote: All in Favor

D. "FORBES CAVE", KAWAIHAE, SOUTH KOHALA, HAWAII ISLAND

Information/Recommendation: Discussion of recent media reports indicating that items formerly in the control and possession of the Bishop Museum which had been returned to a cave in Kawaihae from which they originated from have recently been removed.

Lindsey said there have been unconfirmed media reports that the items have been recovered and returned to Bishop Museum.

Young said the HIBC was one of the original claimants, so repatriation should not occur without consultation.

Lindsey said it is his understanding Bishop Museum will be facilitating the NAGPRA process.

Kahakalau asked how a court can circumvent all of these processes and make decisions and move things without notifying and consulting the claimants. The whole point of NAGPRA is not to move anything without the claimants agreeing.

Lau said it is his understanding that NAGPRA is a Federal process and it was the Federal Court that issued the order and does not necessarily have to consult with anyone.

Young said his concern is that certain claimants agreed to the removal while the rest did not have a say. Now that the items are out, do all of the claimants have a say.

Lau said when the matter was in court, the HIBC could have intervened as a claimant, but because they did not, the HIBC lost their say.

Young said the HIBC advised by a different Deputy Attorney General that the HIBC did not have the jurisdiction to intervene.

Dela Cruz said it is his understanding these are burial items not iwi. Hui Malama then received the items and it was their job to put them back, which they did and nobody objected. Then a new claimant went to the Federal Court and got the items taken back to the museum. Dela Cruz sees it as being back at stage one. The HIBC is still a claimant and needs to ask the court and the museum what is the next step.

Dela Cruz said his other concern is if the items are back at the museum, are they safe. As a claimant, it is the HIBC's right to know what the status of this case is. Are all 83 items going to be

classified as moepu or not moepu, or is each item going to be handled one by one. Maybe all of these items are not moepu, some have said that the items were placed in the cave for safekeeping. The HIBC needs to take an active role in determining the disposition of the items. This is an important issue. Honokoa is a special place. This is all about the items, which were stolen to begin with.

The court needs to answer what the next steps are and what the timeframe is for this process to work. Dela Cruz said he knows what Hui Malama does and so did the museum. When those items went from the museum to Hui Malama, the items were going back where they were taken from. Other than what we are reading in the paper, nobody is telling us what is going on. As claimants, the HIBC deserves that.

Young asked if the Attorney General offices can determine the HIBC's status as a claimant under NAGPRA and if there are any other stipulations placed on the three litigants by the Federal Court which may affect the other claimants. If we are starting over, Bishop Museum needs to come back to all of the claimants.

Lau said he will see if there is anything in the public record from the court.

McDonald said it needs to be determined if the items are moepu.

Young said determining the HIBC's status as a NAGPRA claimant may be enough.

McDonald said the State should provide funding for the HIBC for travel.

Lau said he will have to speak with the Deputy Attorney General who was assigned this. Lau said the HIBC is not going to get the Federal Court to report to them. Lau said he will see what is available and try and get a preliminary report back to the Council.

Kahakalau said the HIBC was told not to intervene in the lawsuit and now we are out of the loop. The HIBC is responsible to report to the people. The HIBC motioned that the items should stay in the cave until all of this was resolved.

Young said the Council is on record that the items should stay in the cave. If this whole process is going to start again whether or not that is still the HIBC's position is another story, but we need to determine where the HIBC stands in the process now.

A motion was made to close agenda item IV.D. (Sherlock/Kahakalau)

Vote: All in Favor

E. OLD KONA AIRPORT STATE PARK

**LANIHAU AND KEAHUOLU AHUPUA'A, NORTH KONA DISTRICT, HAWAI'I ISLAND
TMK: (3) 7-5-005:007**

Information/Recommendation: Informational presentation by Department of Land and natural Resources- Division of State Parks staff on the reinterment planning for iwi kupuna displaced during storm incidents since 1995.

Maryanne Maigret (Maigret), State Parks Archaeologists provided the HIBC with an update of State Parks efforts to resolve a long outstanding issue at the Old Kona Airport. An updated reinterment plan has been drafted. The plan was originally drafted and submitted in 1999, but needed to be updated. The plan is for the reinterment for remains that were exposed from storms. State Parks will be working with the SHPD and is in consultation with families who participated in previous reinterments following Hurricane 'Iniki and storms in 1995. The plan is to use the same reinterment site. The draft plan has been sent out and Maigret expects responses to be in after the holidays.

The long term plan is for the Old Airport State Park to be turned over to the County.

Dela Cruz asked where the iwi are now.

Maigret said at the Old Kona Airport in curation. 18 sets of remains have been prepared and wrapped and are ready for reinterment.

Young asked if the HIBC will have a chance to review the plan.

Maigret said the plan has not even been submitted to the SHPD yet. Maigret wanted to wait until the families' comments have been received.

When the area is turned over to the County, the County will be made aware of any restrictions associated with the sites. Maigret said there is regular monitoring of the beach areas for any additional exposed remains.

Elarionoff asked if additional burials can be identified ahead of being exposed. More people will be accessing the area and there will be more chances for disturbance.

Maigret said there are no plans for archaeological testing and it would be difficult to identify them. Maigret said she has spent some time watching how people move within the park and it appears that the general areas where the burials are situated are not high traffic areas.

McDonald said the area where the reinterment site is located is called Waikilohi not Maka'eo. The problem is that it is a sinkhole and the homeless sleep there and have started breaking the wall down to see what was in there. The families have met regarding this and McDonald commended Maigret for her efforts to resolve this.

A motion was made to close agenda item IV.E. (Sherlock/Kahakalau)

Vote: All in Favor

V. INADVERTENT DISCOVERIES

A. KUKI'O AHUPUA'A, NORTH KONA DISTRICT, HAWAI'I ISLAND TMK (3) 7-2-019:019

Lindsey said disturbed remains were identified during excavations in fill material on a lot at the Kuki'o Project. No *in-situ* location was identified.

Nazara asked if there is one reinterment location at Kuki'o.

Lindsey said it is case by case. Most of the inadvertents have been preserved in place.

Kahakalau asked when Lindsey says ‘most’ how many is that.

Lindsey said all of the inadvertents he has been involved with at Kuki’o with an in-situ source have been preserved in place. There has been one case where fragments were identified and no source was identified.

Kahakalau said she is just trying to get an idea of a breakdown burials identified in an inventory survey in a given area and how many inadvertents followed. This information would be important for the HIBC to reference when considering future plans. It may be something hard to do, but somehow the information needs to be organized.

A motion was made to close agenda item V.A. (Sherlock/Kahakalau)

Vote: All in Favor

VI. ANNOUNCEMENTS

VII. ADJOURNMENT

A motion was to adjourn the HIBC Meeting (Young/Sherlock)

Vote: All in Favor

The HIBC meeting was adjourned at 3:21 p.m.